IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.13900 of 2007
M.P.No.1 of 2007

V.Rajendran ... Petitioner

Versus

1. The Tamilnadu Industrial
Investment Corporation Limited,
rep. by its Managing Director,
MHU Complex,
692, Annasalai, Nandanam,
Chennai0-35.

2. The Tamilnadu Industrial
Investment Corporation Limited,
rep. by its Branch Director,
DDDC Building (Upstair),
Pennagaram Road,
Dharmapuri-636 702. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for writs of Mandamus, forbearing the respondents herein, their subordinates or anybody acting through them from in any manner confirming the sale in favour of any third party or in any manner taking possession of the property of the petitioner and comprised in S.F.No.209/1, Athiganoor, Kannadahalli Village, Pochampalli Taluk, Dharmapuri District in an extent of 2.48 acres pursuant to the auction conducted by the second respondent on 09.04.2007 or on any other day.

For Petitioner : Mr.N.Damodharan
For Respondents : Mr.T.Murga Manickam

O R D E R
Writ petition is for a Mandamus, forbearing the respondents herein, their subordinates or anybody acting through them from in any manner confirming the sale in favour of any third party or in any manner taking possession of the property of the petitioner pursuant to the auction conducted by the second respondent on 09.04.2007 or on any other day.

2. The petitioner is the Managing Director of M/s.R.R.Fruit Products (P) Ltd, Krishnagiri a Company producing fruit pulp. The Company took a term loan from the respondents for Rs.45.60 lakhs, on 10.10.1995. Due to non-payment of instalments, the loan was foreclosed and possession was taken by the respondents in exercise of the powers under Section 29 of the State Financial Corporation Act, 1981. Thereafter, the primary assets including the buildings and machinery were brought for public auction and the same was intimated to the petitioner by the Branch Manager, Tamilnadu

Industrial Investment Corporation Limited. The auction was conducted on 24.10.2002, and M/s.Devaraj Fruits, Krishnagiri offered Rs.30.10.lakhs and was declared as highest bidder. Subsequent to the said auction, the respondent-Corporation sent another letter dated 10.01.2003, to the petitioner, informing that Rs.15.4 lakhs towards principal amount, Rs.41.16 lakhs towards interest and Rs.1.29 lakhs towards other heads; altogether, Rs.57.89 lakhs was due to the Corporation. Since the amount offered by the auction purchaser was less than the amount due to the corporation, the respondent decided to take possession of the agricultural land situated in S.No.156/A1B, Athiganoor, Kannandahalli Village, Pochampalli Taluk, Dharmapuri Districtiion to an extent of 1.17 acres situated in S.No.209/1 and another land to an extent of 2.45 acres situated in the same village on 23.01.2003 by exercising its powers under Section 29 of the Financial corporation Act.

3. Thereafter, the respondent-Corporation sent a letter dated 21.10.2003 to the petitioner, offering One-Time Settlement (OTS) for discharge of the loan amount due to the Corporation. Since there was no response from the petitioner, the respondent-Corporation sent another letter dated 18.12.2003, informing the petitioner that the property offered as collateral security comprised in S.F.No.209/1, Athiganoor, Kannadahalli Village, Pochampalli Taluk, Dharmapurai District to an extent of 2.48 acres would be sold in tender-cum-public auction and the said letter was followed by another letter dated 15.11.2004, intimating that the outstanding loan due from the petitioner, including the principal and interest, was Rs.83.75 lakhs. On 01.02.2005, the respondent-Corporation informed the petitioner that if the amount due to the corporation is not repaid within seven days, the collateral security offered by the petitioner would be brought for sale through public auction.

` 4. The petitioner has submitted that on receipt of the letter dated 01.02.2005, he met the second respondent and demanded details of accounts. But the second respondent, refused to furnish the details. While so, the petitioner received a letter dated 31.10.2005 from the second respondent, informing that the respondent-Corporation has introduced One Time Settlement scheme (OTS) for payment of dues, and directed the petitioner to avail the opportunity to settle the loan amount. On receipt of same, the petitioner met the second respondent and requested him to give some more time to settle the loan amount. But, the respondent refused to accept the request and issued another letter dated 07.12.2005 informing that the property would be brought for public auction, if the amount is not paid within 10 days from the date of receipt of the letter.

5. As there were no bidders, the auction was not conducted and finally, the second respondent sent a letter on 20.03.2007, calling upon the petitioner to discharge the entire loan amount on or before 30.03.2007, and the same was received by the petitioner only in the month of April'2007. Immediately, he contacted the second respondent to explain the position, but, the petitioner was informed that by way of auction, the property had already been sold to a third party. At this stage, the petitioner has filed the present writ petition for a Writ of Mandamus directing the respondents not to confirm the auction sale conducted on 09.04.2007.

6. Learned counsel for the petitioner submitted that though the petitioner was willing to settle the loan amount, the respondents have refused to give adequate time to mobilize funds to repay the loan amount. He also submitted that the action of the respondents in not furnishing the details of the loan amount as demanded by the petitioner is illegal and the interest charged on the principal amount was exorbitant, due to which, the petitioner could not clear the loan amount. He further submitted that the letter dated 29.03.2007, directing the petitioner to pay the due amount on or before 30.03.2007, was received by the petitioner only in the First week of April'2007 and by sending a communication with a short notice and that too few days before the auction, exhibits the malafide attitude of the respondents and therefore this court in exercise of its jurisdiction Under Article 226 should forbear the respondents from confirming the auction.

7. The respondents have filed a detailed counter affidavit and contended that the petitioner's Unit obtained a term loan from the second respondent for Rs.45.06 lakhs on 10.10.1995, offering land, building and machineries situated in S.No.293/2, 7, 294/3 and 203/34, Pollupalli Village as primary security. The Unit also offered properties to an extent of 1.17 acres situate in S.Nos.156/A1B, Athiganoor Village and 2.46 acres in S.No.209/1 in the same village as collateral security. Though the unit commenced its production in the year 1997, it stoped its operation in the year 1999 and defaulted its payments. Therefore, the respondents invoked Section 29 of the State Financial Act, 1951 and took possession of the property offered as primary security, on 17.07.2001 and the said property was brought for auction on 07.09.2000. As there were no bidders, thi property was brought for auction again on 04.11.2002. They have further submitted that though the highest bidder offered Rs.21 lakhs, he failed to remit the amount, in time and therefore, once again, another auction was conducted on 24.10.2002, and the sale was confirmed in favour of one Sri. Devaraj Fruits, Krishnagiri for Rs.30.10 lakhs. After crediting the sale price against the principal amount, the petitioner was once again informed by a letter dated 21.10.2003 to avail One Time Settlement formulated by the Corporation. However, the unit communicated its inability to make any offer under this scheme. In spite of repeated letters and reminders, the petitioner has failed to repay the loan amont with interest and ultimately, possession of collateral properties offered by the petitioner was taken on 03.12.2004. Pursuant to introduction of One Time Settlement scheme in force in the year 2005, the petitioner was again informed by letter dated 31.10.2005 to avail the same. As the petitioner expressed his inability to repay, the respondents had no other option except to proceed with the auction of the collateral properties offered by the petitioner. After giving wide publicity, the auction was conducted on 21.12.2005 and since the amount offered was meagre, it was rejected by the second respondent. Finally, on 29.03.2007, the petitioner was informed that the auction would be conducted on 9.04.2007 and he was instructed to avail the One Time Settlement scheme. Since there was no response, the auction as scheduled was conducted and one Mr.K.Ramesh, who offered Rs.15.19 lakhs was decleared as the successful bidder for the property offered as collateral security in S.No.156/1AB Athiganoor Village. Similarly, one Selvi, wife of Murugan, who offered 6.06 lakhs was declared as successful bidder for the collateral security in S.No.209/1, Athiganoor village.

8. Mr.T.MurugaManickam, learned counsel for the respondents submitted that the after taking possession of thi property under Sections 29 and 30 of ths State Financial Corporation Act, Public auction was conducted after due publicity and there is no illegality or irregularity in the auction conducted by the respondents. Confirmation of thi auction being consequentional, thi prayer in the writ petition is not maintainable. He further submitted that pursuant to the One Time Settlement Policy introduced by the Corporation, the petitioner had been periodically instructed from the year 2004 onwards to avail the One Time Settlement under the schemes in force, but he has failed to avail the concession extended by the Corporation and that there is no bona fide in the request. Learned counsel for the respondents further submitted that the letter dated 29.03.2007 is the last of thi reminders sent to the petitioner, informing that the property would be brought for public auction on 09.04.2007. He further submitted that the petitioner has projected a case as if he was not given adequate opportunities earlier, which is factually wrong, and therefore, the contention should be rejected.

9. Placing reliance on the decision of the Supreme Court in Karnataka State Industrial Investment & Development Corporation Ltd., v. Cavalet India Ltd., and others reported in 2005 (4) SCC 456, learned counsel for the respondents submitted that unless the petitioner has shown some bona fides, no indulgence should be given to the defaulters. In Paragraphs 12 and 13 of the judgment, the Supreme Court held as follows:

"12. In U.P.STATE Financial Corpn. v. Gem Cap (India) (P) Ltd., it was held that the High Court while exercising its jurisdiction under Article 226 of the Constitution cannot sit as an appellate

authority over the acts and deeds of the Corporation and seek to correct them and that the doctrine of fairness, evolved in administrative law was not supposed to convert the writ Courts into appellate authorities over administrative authorities. On the facts of the case it was held that the borrower had no intention of repaying any part of the debt and was marely putting forward one or the other reason to keep the Corporation at bay. Whild stiking down the directions issued by the High Court, this Court held that the High Court had not kept in mind the well-recognised limitations of their jurisdiction under Article 226 of the Constitution and acted as an appellate authority over the actions of the Financial Corporation, in a matter where not a single provision of law was violated. The Court observed (SCC p.306, para 10) that the
Financial Corporations were not sitting on King solomon's mines, but they too borrow monies from Government or other Financial Corporations and they also have to pay interest thereon.
The Court observed that: (SCC p.306, para 10)
Fairness is not a one-way street and the fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness.
The Court pointed out that in a matter between the Corporation and its debtor, a writ Court has no say except in two situations: (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e., unreasonably, Mahesh Chandra was distinguished noticing that it was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation and on the facts of that particular case it was found that the Corporation was acting unreasonably.
13. In U.P.Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd., this Court held that it was not a matter for the Courts to decide as to whether the Financial Corporation should invest in the defaulting unit, to revive or to rehabilitate it and whether even after such investment the unit would be viable or whether the Financial Corporation should realise its loan from the sale of the assets of the Company. The Court observed that a Corporation being an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge, in the discharge of its functions, it is free to act according to its own right. The views it forms and the decisions it takes would be on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. In such a situation, more so in commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned. The Court further held that: (SCC p.761, para 21)
"Unless its action is malafide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

In Paragraph19, the Supreme Court has laid down certain legal principles, which are as follows:
"(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.
(ii) In a matter between the Corporation and its debtor, a Writ court has no say except in two situations:
(a) there is a statutory violation on the part of the Corporation, or
(b) where the Corporation acts unfairly i.e., unreasonably.
(iii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned.
(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however,

more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.
(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.
(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.
(vii) The financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.
(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.'
(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

10. Heard Mr.N.Damodharan, learned counsel for the petitioner and Mr.T.Muruga Manickam, learned counsel for the respondents.

11. In the light of the guiding principles of the Hon'ble Supreme Court, the conduct of the contesting parties are examined to find out whether there is any bonafide on the part of the borrower to discharge the loan amount or the financial corportation has been unfair, acted in a malafide manner to realise the debts due to them.

12. In the instant case, the petitioner has availed term loan on 10.10.1995 from the respondents, when thi unit defaulted in payment of loan amount with accrued interest, it was foreclosed in the year 1999 and the primary assets were taken over by the respondents. Thereafter, the factory premises as well as the primary assets were brought for auction sale. It is evident from the pleadings that after the introduction of One Time Settlement scheme, the Corporation has sent a letter dated 21.10.2003 to the petitioner to avail the offer and repay the loan amount and this letter was followed by several reminders, continously from the year 2004 onwards and therefore the contention of the petitioner that he has not been given adequate time to repay the loan amount or to avail the One Time Settlement is not acceptable. On the contrary, the petitioner has also expressed their inability to repay the amount and therefore, there is absolutely no bona fide in their contention. Thi letter dated 29.03.2007 was only a last opportunity to the petitioner to repay the entire amount and thi sequence of events clearly demonstrete that the borrower has not shown his bona fide to repay the loan amount with accrued interest. In spite of concession (One Time Settlement scheme) granted to make payment, he has failed to make any payments and thereby protracted the realisation of the debts. Therefore it could not be said that there is a statutory violation on the part of the Corporation to invoke the provisions under Section 29 of the Act.

13. In the reported judgment, the Supreme Court has categorically held that unless the action of the Financial Corporation is malafide or unreasonable, even a wrong decision taken by the Corporation, it is not open to challenge. It is for the Courts or third party to substitute its decision. The Supreme Court further held that in matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and if the procedure adopted is transparent, acceptable and after wide publicity, the said decision has to be considered in its proper perspective and a

conscious decision has to be taken to decide whether action under Section 29 of the Act is called for. For the default committed by the borrower, the principle security was brought for action in the year 2000, and since then the petitioner has not made any payments, inspite of reminders. In the context of the petitioner's inability to repay the amount, there is no point in blaming the Financial Corporation for their bona fide action to realise the loan from the sale of assets of the petitioner.

14. In view of the above, I do not find that the action of the respondents in bringing the collateral security for public auction, would be termed as malafide or unreasonable. The petitioner is not entaitled to the equatable remedy under Article 226 of the constitution of India. It is also brought to the notice of this Court that pursuant to the sale, the third party's right has crept in and the present petition only for a Writ of Mandamus not to confirm the auction sale, which is only a consequential act. The sale held on 9.4.2007, has not been assailed in the writ petition. Since the action of the respondents is statutorily protected and there being no arbitrarines or malafide, the consequenial act of confirmation cannot be questioned in a separate writ petition.

15. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

04.09.2007
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To
1. The Tamilnadu Industrial
Investment Corporation Limited,
rep. by its Managing Director,
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S. MANIKUMAR, J.

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